



Comptroller General
of the United States

Washington, D.C. 20548

12373

Decision

Matter of: TRI-COR Industries, Inc.--Reconsideration

File: B-252366.4

Date: March 8, 1994

Kenneth S. Kramer, Esq., and Anne B. Perry, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester. William L. Walsh, Esq., and William Craig Dubishar, Esq., Venable, Baetjer and Howard, for Research Analysis and Maintenance, Inc., an interested party. Captain Gerald P. Kohns, Department of the Army, for the agency.

Christine F. Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office (GAO) denies request for reconsideration of a prior decision, which upheld the agency's determination not to conduct discussions and to award a contract to a firm that submitted a higher-rated, higher-priced proposal, where the request merely repeats the protester's interpretation of the evidence considered by GAO in reaching its prior decision.

DECISION

TRI-COR Industries, Inc. requests reconsideration of our decision in TRI-COR Indus., Inc., B-252366.3, Aug. 25, 1993, 93-2 CPD ¶ 137, denying its protest of the award of a contract to Research Analysis and Maintenance, Inc. (RAM), under request for proposals (RFP) No. DAEA32-92-R-0003. The solicitation was issued by the Department of the Army Information Systems Command, for the provision of non-personal technical support services for the software development center, Fort Huachuca, Arizona. TRI-COR asserts that we improperly found that the Army had a reasonable basis for not conducting discussions, and that the Army's selection of RAM's higher-rated, higher-priced proposal was reasonable and consistent with the stated evaluation scheme.

We deny the request for reconsideration.

Section M of the RFP, as amended, provided that award would be made to the offeror whose proposal represented the best value to the government, considering price and other qualitative factors. In determining best value, proposed price was to be "significantly less important than the combination of the quality factors," which were technical capability, management capability, past performance, and cost realism. In determining a proposal's qualitative merit, the RFP provided that, "[t]echnical will have a weight that is slightly more important than management, . . . Past performance and price realism will be equal in weight. Each will be slightly less important than management." The RFP set forth two factors each for the evaluation of the technical and management proposals, followed by a series of subfactors listed in descending order of importance. The merit of each proposal factor and subfactor was to be expressed through numerical scores and corresponding adjectival ratings, as articulated in the Source Selection Plan.¹

Section M of the RFP reserved to the government the right to award without holding discussions and therefore encouraged offerors to submit their best offer in their initial proposal. In addition, the RFP incorporated Federal Acquisition Regulation (FAR) § 52.215-25, Alternate III, which states that the government intends to award a contract without discussions, but reserves the right to conduct discussions if such are later determined by the contracting officer to be necessary.

On November 15, 1992, five offerors, including TRI-COR and RAM, submitted proposals under the set-aside portion of the RFP. TRI-COR submitted the low priced proposal at \$36,033,859, while RAM submitted the third low-priced proposal at \$38,103,677. The two offerors received the following scores for the technical and management factors:

	<u>RAM</u>	<u>TRI-COR</u>
Technical	798	676
Management	488	599
Combined	1,286	1,275

With regard to the adjectival ratings, RAM's technical proposal received 9 "superior," 3 "very good" and 4 "acceptable" ratings, while TRI-COR's technical proposal received no "superior," 9 "very good" and 7 "acceptable"

¹Specifically, 9 or 10 points was "superior," 7 or 8 points was "very good," 5 or 6 points was "acceptable," 3 or 4 points was "marginal," and 1 or 2 points was "unacceptable."

ratings. On the other hand, RAM's management proposal received "very good" ratings in all but one of subfactor, while TRI-COR's proposal received 5 "superior" and 5 "very good" ratings for the management subfactors. The SSEB summarized that RAM had "no discernible weak points in their management approach," and that TRI-COR was "a highly acceptable candidate for award of this contract" based upon its technical proposal. While the SSEB prepared a few possible discussion questions for both TRI-COR and RAM to clarify aspects of their proposals, the responses to these questions were expected to have only a slight impact on their scores, if any.

The Source Selection Advisory Committee (SSAC) reviewed the evaluation documentation for each proposal and decided to make an award recommendation on the basis of initial proposals. The SSAC determined that discussions were unnecessary because all offerors were "at least minimally qualified to provide the required services," and the answers to the proposed clarification questions would not alter their technical or management rankings. Before conducting its cost/technical trade-off of the proposals,² the SSAC performed a price evaluation and concluded that all proposals, including RAM's and TRI-COR's, represented a low price risk. In terms of performance risk, the SSAC determined that RAM's proposal warranted a low risk rating, but TRI-COR's, a moderate risk rating.

The SSAC then evaluated the relative differences between the proposals in terms of their SSEB rankings, their performance risk assessments, and their prices. At the end of this review, the SSAC recommended RAM for award, stating that:

"[RAM's] total score (1,286) and in particular the technical evaluation point total (798), which was 122 points or 21.4 percent higher than [TRI-COR's] (676), represented such a substantial difference that [RAM's] proposal clearly represents the best value to the [g]overnment and their performance is anticipated to warrant the price premium."

The Source Selection Authority (SSA) adopted the SSAC's findings and recommendation on January 15, 1993, and award was made to RAM on February 5.

In our prior decision, we found that RAM had submitted an undeniably superior technical proposal and that the firm's decisive technical advantage primarily drove the selection decision. We further found, contrary to TRI-COR's

²The SSAC confined its cost/technical trade-off to the top three proposals, which included TRI-COR's and RAM's.

arguments, that the agency's emphasis of RAM's technical superiority was accommodated by the evaluation criteria, since the RFP accorded the greatest weight to the technical evaluation factor and RAM's proposal still compared very favorably to TRI-COR's under the remaining evaluation factors. For example, while the SSAC recognized that TRI-COR's management proposal was superior to RAM's, it also appropriately determined that RAM's lower-rated management proposal nonetheless evidenced significant strengths, having received very good ratings for all but one of the management subfactors. In addition, we found that the agency could reasonably determine that RAM's price, which was only 6 percent higher than TRI-COR's, was an acceptable premium to pay for the significant technical superiority and the documented management strengths represented in the awardee's proposal.

In its request for reconsideration, TRI-COR interprets our prior decision as acknowledging that the agency misapplied the RFP evaluation criteria in violation of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(1). As described above, our decision did not find a misapplication of the evaluation criteria, but concluded that, under those criteria, the agency could find that the awardee's significant and undisputed technical superiority outweighed the protester's management superiority and lower price. In this regard, the record established that the agency considered the awardee's and the protester's relative strengths and weaknesses in making this determination.

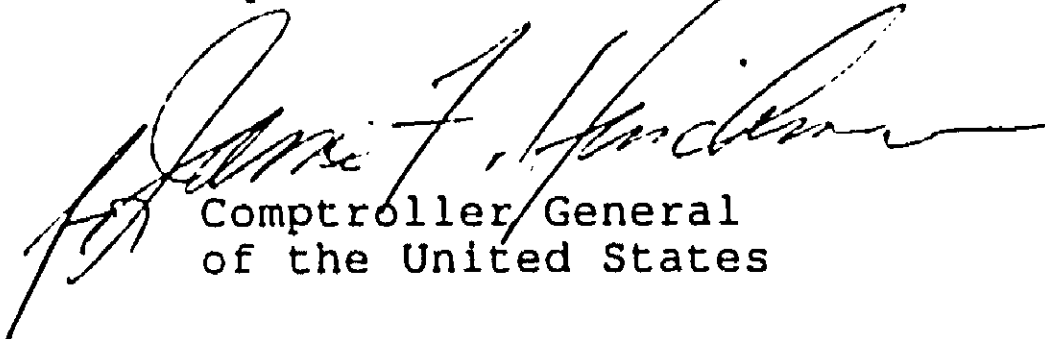
TRI-COR claims that our conclusion that the agency considered the relative strengths and weaknesses of the proposals lacks support in the record, particularly considering the hearing testimony given by an agency official. The arguments advanced by TRI-COR in this regard duplicate, often verbatim, those raised in its initial protest. In deciding that protest, we considered the evidence cited in the request for reconsideration, as well as TRI-COR's interpretation of the legal significance of the evidence. As explained in our initial decision, we reach different conclusions from the evidence than does TRI-COR. We have again reviewed the record, including the hearing testimony, and have found no basis to question the reasonableness or propriety of the source selection decision.

Our prior decision also found that the agency had a reasonable basis to make an initial proposal award without discussions. Since the RFP incorporated the provisions of FAR § 52.216-16, Alternate III, advising offerors of the agency's intent to award without conducting discussions, the contracting officer could properly do so, provided that he reasonably determined that discussions were unnecessary.

FAR § 15.610(a)(4); see Macro Serv. Sys., Inc., B-246103, B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200. In this case, the discussion questions promulgated by the SSEB sought only limited information to amplify that contained in TRI-COR's technical proposal. Since TRI-COR's responses to these questions would likely have had only a marginal impact on the protester's score, we found that the contracting officer could reasonably conclude that discussions were unnecessary. The Jonathan Corp., Metro Mach. Corp., B-251698 et al., May 17, 1993, 93-1 CPD ¶ 174; see also BDM Int'l, Inc., 71 Comp. Gen. 363 (1992), 92-1 CPD ¶ 377.

TRI-COR does not question the record concerning the limited scope of the questions that would have been asked if discussions had been conducted. However, TRI-COR urges that even very limited discussions might have changed the outcome of this procurement, since the combined (technical and management) scores of the two offerors were separated by such a narrow margin. This argument is refuted by the fact that the primary discriminator favoring the award to RAM was that firm's much higher technical score. Since TRI-COR does not argue, nor does the record otherwise suggest, that TRI-COR's significantly lower technical score would have materially improved based upon the proposed discussions questions, we conclude that discussions would have been inconsequential and were unnecessary. See The Jonathan Corp., Metro Mach. Corp., supra.

The request for reconsideration is denied.


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